lawyer and an unfailing patience, courtesy, and dignity. These qualities with his accurate sense of proportion, his quick appreciation of the decisive points of the cause, and above all his kindly and forceful personality endeared him to the profession as a judge and as a man. In charging the jury he possessed to an uncommon degree the art of confining them to the underlying issues of fact. His judicial opinions were notable for their exhaustiveness and finality. His teaching was accurate in principle and practical in detail. One of his most distinctive qualities was a passion for going to the root of things. It was this, no doubt, which first led him to the study of jurisprudence though immersed in the practical applications of the law; and it gave him the power of seeing things as they were, with the clear vision of intellectual honesty undimmed by indolence, sympathy, or opportunism. He had a singular directness and vigor of statement.

The combination of intellectual and personal qualities I have attempted to outline was crowned by a simplicity of manner and a personal charm enhanced by the background of his long and distinguished public service.

JOHN K. BEACH

Connecticut Supreme Court of Errors

REGULATION OF INTRASTATE COMMERCE UNDER THE COMMERCE CLAUSE

The two recent decisions of the United States Supreme Court, *Railroad Commission of Wisconsin v. C. B. & Q. Ry.* (1922) 42 Sup. Ct. 232, and *State of New York v. United States* (1922) 42 Sup. Ct. 239, represent what is in many ways the most significant development in that phase of our law having to do with the relation between the power of the Federal Government and the power of the states to regulate the instrumentalities of commerce since *Gibbons v. Ogden.*[1] The Supreme Court has construed the Transportation Act of 1920 as conferring upon the Interstate Commerce Commission authority to prescribe a general level of railroad rates for traffic entirely within a state as a part of its duty of preventing an undue burden being placed upon interstate commerce and has upheld the statute, as so construed, as within the power of Congress under the commerce clause.

The fundamental principles which are involved have long been free from doubt. Thus by *Gibbons v. Ogden* it was settled that the power of Congress to regulate commerce among the several states is "complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution."[2] The Supreme Court frequently has declared that on subjects which require uniformity of regulation throughout the country the power of Congress

[1] (1824, U. S.) 9 Wheat. 1.

[2] *Ibid.* at p. 196.

is exclusive and the non-action of Congress confers upon the states no power to act. On the other hand, it is recognized that there are matters affecting interstate commerce admitting of diversity of treatment according to the requirements of local conditions and that as to these a state may act until Congress sees fit to do so, but that when Congress does act, the exercise of its authority over-rides all conflicting state legislation.[3] However, a state may under no circumstances impose direct burdens upon interstate commerce.[4]

Although these general principles have long been recognized, the fact that the same carriers are engaged in transportation both among and within the several states and that interstate and intrastate commerce are to a greater or lesser extent related has made difficult the application of the principles and has given rise to many interesting questions as to where the line is to be drawn between federal and state authority. A brief review of a few of the leading cases in which the question has been presented will serve to indicate the development of the law prior to the time of the passage of the Transportation Act of 1920.

The case of *Louisville & Nashville Co. v. Eubank*[5] presented the question of the validity of a provision of the constitution of Kentucky adopted in 1891 making it unlawful for a carrier to receive a greater compensation for the transportation of passengers or property for a shorter than for a longer distance over the same line—the shorter being included within the longer. The state court had construed this provision as applying not only to transportation entirely within the state but also to transportation from a point in another state so as to make it unlawful for a carrier to charge less for transportation from that point to a destination in Kentucky than from an intermediate point in Kentucky to the same destination. The Supreme Court held this provision

[3] *Cooley v. Board of Wardens* (1851, U. S.) 12 How. 299, 319; *Ex parte McNiel* (1872, U. S.) 13 Wall. 236, 240; *Welton v. Missouri* (1875) 91 U. S. 275, 280; *County of Mobile v. Kimball* (1880) 102 U. S. 691, 697; *Gloucester Ferry Co. v. Pennsylvania* (1885) 114 U. S. 196, 204, 5 Sup. Ct. 826, 828; *Bowman v. Chicago, etc. Ry.* (1888) 125 U. S. 465, 481, 485, 8 Sup. Ct. 689, 696, 698; *Gulf, Colo., & S. F. Ry. v. Hefley* (1895) 158 U. S. 98, 103, 104, 15 Sup. Ct. 802, 803, 804; *Northern Pac. Ry. v. Washington* (1912) 222 U. S. 370, 378, 32 Sup. Ct. 160, 161; *So. Ry. v. Reid* (1912) 222 U. S. 424, 436, 32 Sup. Ct. 140, 142.

[4] Thus, a state may not tax interstate commerce as such. *State Freight Tax Cases* (1872, U. S.) 15 Wall. 232; *Western Union Tel. Co. v. Kansas* (1910) 216 U. S. 1, 30 Sup. Ct. 190. See also Powell, *supra* p. 799, *et seq.* It may not prohibit interstate trade in legitimate articles of commerce. *L. & N. Ry. v. Cook Brewing Co.* (1912) 223 U. S. 70, 32 Sup. Ct. 189. A state may not impose penalties for failure of a telegraph company to make prompt delivery of interstate messages. *Western Union Tel. Co. v. Boegli* (1920) 251 U. S. 315, 40 Sup. Ct. 167. It may not require an interstate railroad to detour its passenger trains in order to serve a small community also served by local trains. *St. L. & S. F. Ry. v. Public Service Com. of Missouri* (1921) 254 U. S. 535, 41 Sup. Ct. 192. A state may not prescribe rates to be charged for transportation from one state to another. *Wabash v. Illinois* (1886) 118 U. S. 557, 7 Sup. Ct. 4.

[5] (1902) 184 U. S. 27, 22 Sup. Ct. 277.

invalid as being a regulation of interstate commerce because it so linked the interstate rate with the rate for the shorter haul that the interstate charge was directly controlled by the state law. In other words, it held that a state, under the guise of regulating rates within its borders, could not make the validity of interstate rates depend upon the level of rates prescribed for intrastate traffic.

In the *Minnesota Rate Cases*[6] the court was again called upon to determine the validity of the action of a state in prescribing a general basis of rates for traffic within the state. This time the state action was limited strictly to intrastate transportation, but it was assailed upon the ground that since the rates prescribed were on a lower basis than the rates applying between points in the state and points in other states, they resulted in a direct burden upon interstate traffic and in discrimination against localities in other states.[7] An important feature of this case was that the interstate rates had not been prescribed or approved by federal authority. It was held that in the absence of federal action the power of the state to prescribe reasonable intrastate rates was not restricted by the effect which these rates might have upon the interstate rates of the carriers.[8]

Next came the *Shreveport* case.[9] The state of Texas had prescribed rates for transportation over the lines of the various carriers between points within its borders. These rates were lower than the interstate rates of the same carriers applying from points in Louisiana to destinations in Texas. The Interstate Commerce Commission found that the lower intrastate rates resulted in discrimination against Shreveport, Louisiana, located near the Texas border, and in favor of nearby competing points in Texas. Although the Commission found that some of the interstate rates were reasonable, it ordered that the discrimination be removed by reducing all the rates from Shreveport. The carriers attacked this order as beyond the power of the Commission, it being contended that "so far as the interstate rates were sustained by the Commission as reasonable, the Commission was without authority to compel their reduction in order to equalize them with the lower intrastate rates." The Supreme Court held: first, that the federal authority being supreme, Congress had the power to deal with intrastate rates if necessary to remove discrimination against interstate commerce;[10]

[6] (1913) 230 U. S. 352, 33 Sup. Ct. 729.

[7] See 230 U. S. at p. 397, 33 Sup. Ct. at p. 739.

[8] See the opinion of Mr. Justice Hughes 230 U. S. at pp. 417, 432, 33 Sup. Ct. at pp. 747, 754.

[9] *Houston & Texas Ry. v. United States* (1914) 234 U. S. 342, 34 Sup. Ct. 833.

[10] "Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field." 234 U. S. at p. 351, 34 Sup. Ct. at p. 836.

second, that under section 3 of the Act to Regulate Commerce[11] Congress had conferred authority upon the Interstate Commerce Commission to prevent discrimination in rates against shippers and localities in interstate commerce and that this authority extended to the removal of discrimination caused by intrastate rates; and finally, that since in the case before it the interstate rates were found by the Interstate Commerce Commission to be reasonable the Commission could not order them to be reduced and it was within the rights of the carriers to remove the discrimination by increasing the intrastate rates, any state regulation to the contrary notwithstanding.

It should be observed that in the *Shreveport* case the discrimination found to exist was against a particular locality and because of specific intrastate rates. There was, therefore, no question presented as to the power of the federal government to require the general basis of rates throughout a state to be made the same as that of the interstate rates or of its power to deal with intrastate rates, except to remove discrimination against particular shippers or localities.

Illinois Central Ry. v. Public Utilities Commission[12] was similar to the *Shreveport* case[13] and is worthy of comment only because it suggests that even under section 3 of the Act to Regulate Commerce, as it then read, the Interstate Commerce Commission might have power to prescribe a general basis of rates throughout a state.[14]

Briefly summarized these cases established the following principles:

1. A state might not make the level of interstate rates dependent upon intrastate rates.

2. It might, on the other hand, prescribe reasonable rates for intrastate transportation and its action in so doing was not rendered invalid because these rates might discriminate against localities or shippers engaged in interstate commerce, provided the interstate rates had not been prescribed or approved by the Interstate Commerce Commission.

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[11] Section 3 of the Act to Regulate Commerce provides: "That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." Act of February 4, 1887 (24 Stat. at L. 379, 380) ch. 104, sec. 3.

[12] (1918) 245 U. S. 493, 38 Sup. Ct. 170.

[13] See 245 U. S. at p. 506, 38 Sup. Ct. at p. 174.

[14] "Had the Commission regarded the discrimination as state-wide it is but reasonable to believe that it would have said so in its findings. And had it intended to require or authorize a state-wide readjustment of the intrastate rates it doubtless would have given direct expression to that purpose, which easily could have been done in a few lines." 245 U. S. at p. 508, 38 Sup. Ct. at p. 175.

The Commission had, however, found that the discrimination against interstate commerce was caused by intrastate rates from particularly named border points and, therefore, the court held its order void because it did not clearly specify that these were the rates to be changed.

3. The Interstate Commerce Commission, however, had the power to prevent such discrimination and if it had prescribed or approved the interstate rates[15] it could order the discrimination removed and the particular intrastate rates causing the discrimination adjusted to the basis of the interstate rates. (*Sed quaere,* whether it could prescribe a general basis of intrastate rates if it found this necessary to remove the discrimination against the localities or shippers engaged in interstate commerce.)

Such was the state of the law when by congressional and executive action the railroads of the country were taken over by the Federal Government.[16] Since the Federal Government was acting under its war power, the railroads were not subject to state regulation even as to intrastate traffic.[17] The President, acting through the Director-General of Railroads, increased all freight rates, both interstate and intrastate, and established a general basis of passenger fares which was higher than permitted under the statutes of a number of states.

When, after the conclusion of the war, it became necessary to provide for the termination of federal control, Congress was faced with the fact that the costs of railroad operation had so increased that if the railroads were to be financially able to carry on their business, and in a position to attract needed capital, their revenues must be protected. Accordingly Congress included in those portions of the Transportation Act of 1920 having to do with the return of the railroads to their owners, a provision that after September 1, 1920, the Government should guarantee them certain revenue and that prior to that date their rates should not be reduced without the approval of the Interstate Commerce Commission. By other portions of the Transportation Act Congress made various changes in the Act to Regulate Interstate Commerce (now called the Interstate Commerce Act), among others, adding thereto Section 15(a) which provided in substance that the Interstate Commerce Commission should divide the railroads of the country into groups and prescribe rates such that the carriers as a whole, or in each group, should earn an aggregate annual net operating income equal to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation, and provided further that for the period of two years subsequent to March 1, 1920, such fair return should be five and one-half per cent.

Acting under this section, the Interstate Commerce Commission, upon the application of the carriers, entered upon an investigation[18] in which

[15] This, of course, is the distinction between the *Shreveport* case and the *Minnesota Rate Cases.* The question was expressly reserved in Mr. Justice Hughes' opinion in the latter. (1913) 230 U. S. 352, at p. 419, 33 Sup. Ct. 729, at p. 748.

[16] Federal Possession and Control Act of Aug. 29, 1916 (39 Stat. at L. 619, 645); Federal Control Act of March 21, 1918 (40 Stat. at L. 451).

[17] *Northern Pacific Ry. v. North Dakota* (1919) 250 U. S. 135, 39 Sup. Ct. 502.

[18] *Ex Parte 74* (1920) 58 I. C. C. 220.

it found that in order to earn the return specified in the Act the carriers should increase their freight and passenger rates to certain bases specified therein and authorized the carriers to make such increases.

The carriers thereupon proceeded to file tariffs with the Interstate Commerce Commission and with the various state commissions, putting into effect both interstate and within the several states the advanced rates authorized. With a few exceptions no objection was made by state authorities to the intrastate freight rates. The increased passenger fares were, however, in a number of instances higher than the fares allowed by various state laws or orders of the state public service commissions, and, therefore, the state authorities, among them those of Wisconsin and New York, refused to permit the fares to become effective for intrastate business.

At the time of the passage of the Transportation Act Congress had added to section 13 of the Act to Regulate Commerce paragraph 3, expressly authorizing a carrier to petition the Interstate Commerce Commission to institute an investigation into "any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State," and authorizing the Commission to enter upon such an investigation. Paragraph 4 was also added to this section; it provides as follows:

"Whenever the Commission, after full hearing, finds that any such rate, ... causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, ... thereafter to be charged . . . . in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, ... shall be observed while in effect, by the carriers parties to such proceeding affected thereby, the law of any State of the decision or order of any State authority to the contrary notwithstanding."

Proceeding under this section the carriers in Wisconsin and in New York filed petitions with the Interstate Commerce Commission asking it to institute investigations with respect to the passenger fares required by the state authorities to be maintained within those states.[19] The interested states were notified of these proceedings, as required by section 13 of the Interstate Commerce Act, and took part therein. In both of these investigations the Interstate Commerce Commission found that the operating and transportation conditions were substantially the same for intrastate as for interstate passenger service; that intrastate passengers paying lower rates rode on the same trains and in the same cars with interstate passengers paying higher rates; that the maintenance

[19] Similar cases were instituted by carriers with respect to the rates in many other states.

of intrastate fares lower than the interstate fares authorized in *Ex Parte 74*[20] would result in serious financial loss to the carriers; and concluded that this situation resulted in undue prejudice to a person traveling in interstate commerce and in unjust discrimination against interstate commerce. The Commission found further that the prejudice and discrimination should be removed by making effective in intrastate commerce the rates of fare authorized by it in *Ex Parte 74* and ordered the carriers so to do.[21]

Following the issuance of the Commission's order in the *Wisconsin* case, the carriers, parties thereto, filed bills in equity in the District Court to prevent the State Railroad Commissioners and other state officers from interfering in the maintenance of the fares thus ordered and published. The case came to the United States Supreme Court on appeal from the decision of three judges under section 366 of the Judicial Code granting an interlocutory injunction. In New York, however, the court proceedings were not instituted by the carriers but by the state which brought a bill in equity against the United States and the Interstate Commerce Commission to annul and enjoin the enforcement of the order of the Interstate Commerce Commission. The *New York* case being a direct proceeding to set aside an order of the Interstate Commerce Commission, the state was entitled to rely upon the absence of any substantial evidence to sustain a material finding as a basis for attacking the order; while in the *Wisconsin* case, since the defence of the State authorities was a collateral attack upon the Commission's order, they were obliged to show that the order was void on its face whether supported by the evidence or not. The court held, however, that this circumstance did not require a different conclusion in the two cases.

In both of these cases, as in the *Shreveport* case, there existed, what was lacking in the *Minnesota Rate Cases,* action by the federal authorities finding discrimination and prescribing interstate rates. A question, however, which was not involved in the *Shreveport* case and was only suggested in the *Illinois Central* case was presented by reason of the fact that the Commission's orders purported to apply to all intrastate rates throughout New York and Wisconsin and were not limited to the rates from particular borderline points.[22] The court held that there was not

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[20] *Supra* note 18.

[21] *Wisconsin Passenger Fares* (1920) 59 I. C. C. 391; *In the matter of Rates, Fares and Charges of the New York Central Ry. and other railroad companies in the State of New York* (1920) 59 I. C. C. 290.

[22] "The order in this case, however, is much wider than the orders made in the proceedings following the *Shreveport* and *Illinois Central* cases. There, as here, the report of the Commission showed discrimination against persons and localities at border points, and the orders were extended to include all rates or fares from all points in the state to border points. But this order is not so restricted. It includes fares between all interior points although neither may be near the border

a sufficient showing that all local state rates discriminated against persons or places in interstate commerce to justify an order requiring all of the state rates to be increased on this ground alone.[23] In other words, the court concluded that under section 3 of the Interstate Commerce Act, which was the foundation of the *Shreveport* case, the Interstate Commerce Commission had no power to order a general revision of all state rates, but had the power to deal only with such state rates as caused unjust discrimination to particular persons or localities engaged in interstate commerce, and that the power of the Interstate Commerce Commission to make the orders which it did in the *Wisconsin* and the *New York* cases must be found, if at all, in the provisions added to the Interstate Commerce Act by the Transportation Act of 1920.

The court had, therefore, to consider two questions: first, whether by the Transportation Act and the amendments made by it to the Interstate Commerce Act Congress had intended to confer upon the Interstate Commerce Commission the power to deal generally with intrastate rates, and second, whether, if it had done so, its action was constitutional.

Obviously the intention of Congress is to be found first in the amendments made to section 13. It was contended by the states that the provisions which were added to section 13 did not enlarge the powers of the Interstate Commerce Commission to deal with intrastate rates, but merely put in statutory form the principles of the *Shreveport* case. It would have been difficult to escape this conclusion had the amendment to section 13 given to the Interstate Commerce Commission the power to prevent discrimination only "as between persons and localities in intrastate commerce on the one hand and interstate or foreign commerce on the other;" but paragraph 4 of section 13 contained the further clause declaring unlawful "any undue, unreasonable or unjust discrimination against interstate or foreign commerce" as the result of state rates, and giving the Commission the power to prevent such discrimination. The court said that this indicated that what Congress was trying to prevent was not alone discrimination against particular persons or localities in interstate commerce, but against interstate commerce as a whole.[24] The court pointed out further that in enacting the Transportation Act of 1920 Congress intended to make such general provisions as would render it

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and the fares between them may not work a discrimination against interstate travellers at all. Nothing in the precedents cited justifies an order affecting all rates of a general description when it is clear that this would include many rates not within the proper class or the reason of the order. In such a case, the saving clause by which exceptions are permitted can not give the order validity. As said by the court in the *Illinois Central* case, 'it is obvious that an order of a subordinate agency, such as the Commission, should not be given precedence over a state rate statute, otherwise valid unless, and except so far as, it conforms to a high standard of certainty.'" (1922) 42 Sup. Ct. 232, at p. 234. See also *American Express Co. v. Caldwell* (1917) 244 U. S. 617, 627, 37 Sup. Ct. 656, 661.

[23] (1922) 42 Sup. Ct. 232, at p. 234.

[24] *Ibid.* at p. 237.

possible for the carriers to furnish competent service in interstate commerce; that, as part of this scheme, it had directed the Interstate Commerce Commission to establish a general basis of rates which would bring adequate revenue to the carriers; that the enforcement of the state restrictions would result in a serious financial loss to the carriers and would increase the financial burden upon interstate commerce, thereby interfering with its purpose and with the efficient regulation of interstate commerce by the Federal Government; and that it must have been the purpose of Congress to prevent such interference. The court, therefore, held that Congress had not limited the power of the Interstate Commerce Commission to the prevention of discrimination between particular persons or localities, but had conferred upon it the power to prescribe a general basis of intrastate rates when necessary to prevent an undue financial burden upon interstate commerce.

On the question of the constitutionality of such action by Congress, the court held that the regulation of state rates was merely incidental to the regulation of interstate commerce; that since interstate and intrastate commerce were performed by the same agencies and were so intermingled that the Federal Government could not exercise complete and effective control over interstate commerce without incidental regulation of intrastate commerce, such incidental regulation was not unconstitutional.[25]

This conclusion, far-reaching as it appears to be, must inevitably follow from the logical application to the realities of the situation of the fundamental principles relating to the subject. It is a recognition of the truth, that the transportation systems of the country are not divided by the boundaries of the states but are nation-wide institutions to be dealt with in the interest of the country as a whole.

The *New York* case presents one question which is not raised in the *Wisconsin* case. An early charter of the New York Central Railroad Company bound the company to charge not more than two cents a mile for passenger carriage between Buffalo and Albany. It was objected by the state that this charter was a contract with the state and that if the Transportation Act permitted the Interstate Commerce Commission, by an order, to enable the railroad company to charge more than two cents a mile, it impaired the obligation of a contract in violation of art. 1, section 10, of the Federal Constitution. The court dismissed this contention on the obvious ground that the constitutional provision referred to was a restriction upon the powers of a state but did not restrict Congress or the United States. The fact of this charter provision, however, suggests another question which apparently was not raised when the case was before the court, namely, whether a charter provision with respect to the rate of fare which a railroad may charge is a limitation upon its corporate powers, and whether Congress in estab-

[25] See opinion 42 Sup. Ct. at p. 238.

lishing a general basis of rates throughout the country, can confer upon a state corporation the power to charge on intrastate traffic a rate of fare which, under the law creating the corporation, it has no power to charge.[26]

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CAN AN INJURY BY A GOVERNMENT VESSEL CREATE A MARITIME LIEN?

Mr. Justice Holmes in a recent decision of the United States Supreme Court, *United States v. Thompson* (1922) 42 Sup. Ct. 159, has upset a long established doctrine of maritime law—justifying the revolution on the ground that he was doing away with a fiction. The importance of the case warrants an examination of the soundness of his logic and of the public policy involved.

It had been deemed a settled rule that when a vessel owned or requisitioned and operated by the Government collided with a private vessel, a maritime lien against the former for the damage caused could not be enforced while it was under government control but could be enforced as soon as it reached private hands.[1] A British admiralty court has in fact so decided within the last few weeks.[2] In the decision under discussion, the Supreme Court dealt with three ships, each of which while under government ownership or control had collided with a private vessel, the owners of which libelled the offending vessels after they had passed out of government control into private hands. In each case the Supreme Court issued a writ of prohibition preventing the United States District Courts from exercising jurisdiction.

Perhaps the most noteworthy feature of the decision—five judges against three—is the ground upon which Justice Holmes, speaking for the majority, supports it. He addresses himself not to the policy or expediency of the rule denying redress to the victim of the collision, but derives his conclusion from the application of pure logic—a mode of judicial reasoning to which Justice Holmes has been known to object.[3] He asserts that no lien could arise against a vessel operated by

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[26] It seems that Congress may confer upon a state corporation powers which it does not possess under its state charter. *Cherokee Nation v. So. Kansas Ry.* (1890) 135 U. S. 641, 657, 10 Sup. Ct. 965, 971. Whether Congress has done this in the present instance may be more doubtful, though sec. 13, as amended, seems to be sufficient for this purpose.

[1] *The Siren* (1868, U. S.) 7 Wall. 152; *The Athol* (1842) 1 Wm. Rob. 374; *Workman v. New York* (1899) 179 U. S. 552, 566, 21 Sup. Ct. 212, 217; *The Florence H.* (1918, S. D. N. Y.) 248 Fed. 1012.

[2] *The Tervaete* (1922) 38 T. L. R. 460, by Sir Henry Duke, President of the Probate and Admiralty Division.

[3] Holmes, *Collected Legal Papers* (1920) 181; see also the dissenting opinion of Mr. Justice Holmes in *Vegelahn v. Guntner* (1896) 167 Mass. 92, 106, 44 N. E. 1077, 1080: "The true grounds of decision are considerations of policy and of social advantage, and it is vain to suppose that solutions can be attained merely by logic and the general propositions of law which nobody disputes."